

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOHN PAUL FRANK SCHOWACHERT,

Plaintiff,

v.

POLLEY,

Defendant.

Case No. 1:25-cv-00121-JLT-BAM (PC)

ORDER REGARDING PLAINTIFF'S  
MOTION TO DISMISS

(ECF No. 15)

Plaintiff John Paul Frank Schowachert ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. On March 4, 2025, the assigned District Judge adopted the findings and recommendations to deny Plaintiff's motion to proceed *in forma pauperis* and directed Plaintiff to pay in full the \$405.00 filing fee if he wishes to proceed with this action. (ECF No. 14.)

On March 12, 2025, Plaintiff filed a Motion to Dismiss. (ECF No. 15.) Plaintiff moves to dismiss this action, without prejudice, stating that he cannot pay to proceed and that due to a brain injury he did not know he had two cases open. (*Id.*)

"[U]nder Rule 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment." *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and citation omitted). "[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is

1 required, the parties are left as though no action had been brought, the defendant can't complain,  
2 and the district court lacks jurisdiction to do anything about it." *Id.* at 1078. No defendant has  
3 been served in this action and no defendant has filed an answer or motion for summary  
4 judgment.

5 Accordingly, this action is terminated, without prejudice, by operation of law without  
6 further order from the Court. Fed. R. Civ. P. 41(a)(1)(A)(i). The Clerk of the Court is directed to  
7 terminate all pending motions and close this case.

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9 IT IS SO ORDERED.

10 Dated: March 12, 2025

11 /s/ Barbara A. McAuliffe  
12 UNITED STATES MAGISTRATE JUDGE  
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